

2-7 Drug and Alcohol Testing

2-7.1 Prohibited Activities

A classified employee shall not do any of the following:

- (a) Consume alcohol or use drugs while on duty.
- (b) Report to duty or be on duty with a prohibited level of alcohol or drugs present in the employee's bodily fluids.
- (c) Refuse to submit to a required drug test or alcohol test.
- (d) Interfere with any testing procedure or tamper with any test sample.

2-7.2 Testing Classified Employees

An appointing authority shall require an employee, as a condition of continued employment, to submit to a drug test or an alcohol test, as provided in this rule.

- (a) **Tests authorized.** The following tests are authorized:
 - (1) **Reasonable suspicion testing.** An employee shall submit to a drug test or an alcohol test if there is reasonable suspicion that the employee has violated this rule.
 - (2) **Pre-appointment testing.** An employee not occupying a test-designated position shall submit to a drug test if the employee is selected for a test-designated position.
 - (3) **Follow-up testing.** An employee shall submit to an unscheduled follow-up drug test or alcohol test if, within the previous 24 months, the employee has done any of the following:
 - (A) Voluntarily disclosed drug or alcohol problems.
 - (B) Entered into or completed a rehabilitation program for drug or alcohol abuse.
 - (C) Failed or refused a pre-appointment drug test.
 - (D) Been disciplined for violating this rule.
 - (4) **Random selection testing.** A test-designated employee shall submit to a drug test and an alcohol test if the employee is selected for testing on a random selection basis.

- (5) **Post-accident testing.** A test-designated employee shall submit to a drug test or an alcohol test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.
- (b) **Limitations on certain tests.** An employee subject to testing under this rule may be required to submit only to a drug test, only to an alcohol test, or to both tests subject to the following limitations.
 - (1) **Pre-appointment testing.** Pre-appointment testing is limited to drug testing.
 - (2) **Follow-up testing.** The appointing authority may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug tests or alcohol tests within any 12-month period.
 - (3) **Random selection testing.** The number of drug tests conducted in any one year on a random selection basis cannot exceed 15 percent of the number of all test designated positions. The number of alcohol tests conducted in any one year on a random selection basis cannot exceed 15 percent of the number of all test designated positions.

2-7.3 Testing New Hires; Conditional Offer of Employment

Any offer of employment to a person who is not currently employed in the classified service is a conditional offer of employment. The offer of employment is conditioned upon the person submitting to and passing a pre-employment drug test. A person given a conditional offer of employment is prohibited from performing any duties until the person has submitted to and passed the pre-employment drug test.

2-7.4 Penalties

- (a) **Classified employees.**
 - (1) **All employees.** An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its departmental work rules the range of penalties, including any mandatory penalties, for violating this rule.
 - (2) **Employee selected for test-designated position.** An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a pre-appointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following occurs:
 - (A) The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed in the test-designated position.

- (B) The employee is removed from all applicant pools for test-designated positions and is disqualified from any test-designated position for a period of 3 years.
 - (C) If the employee interferes with a test procedure or tampers with a test sample the employee may also be disciplined as provided in subsection (a)(1).
- (b) **New hires.** If a person given a conditional offer of employment fails or refuses to submit to the pre-employment drug test, interferes with a test procedure, or tampers with a test sample, the conditional offer of employment must be rescinded and the person must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.

2-7.5 Self-reporting

- (a) **Reporting** An employee who voluntarily discloses to the appointing authority a problem with controlled substances or alcohol cannot be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:
 - (1) For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this rule.
 - (2) For pre-appointment testing, follow-up testing, and random selection testing, before the employee is selected to submit to a drug or alcohol test.
 - (3) For post-accident testing, before the occurrence of any accident that results in post accident testing.
- (b) **Employer action** After receiving notice, the appointing authority shall permit the employee an immediate leave of absence to obtain medical treatment or to participate in a rehabilitation program. In addition, the appointing authority shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug test or alcohol test. The appointing authority may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.
- (c) **Limitation** An employee may take advantage of subsection (a) no more often than two times while employed in the classified service. An employee making a report is not excused from any subsequent drug test or alcohol test or from otherwise complying in full with this rule. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug test or alcohol test, including a follow-up test.

2-7.6 Identification of Test-designated Positions

Each appointing authority shall first nominate classes of positions, subclasses of positions, or individual positions to be test-designated. The state employer shall review the nominations and

shall recommend to the state personnel director the positions to be test-designated positions. The director shall review the recommendations and shall designate as test designated positions all the classifications, subclasses, or individual positions that meet the definition of a test-designated position. The designation is not limited by or to the nominations or recommendations. The appointing authority shall give written notice of designation to each test-designated employee at least 14 days before implementing the testing provisions of this rule.

2-7.7 Continuation of Existing Programs

Until the state personnel director issues regulations to the contrary, nothing in this rule prohibits an appointing authority from continuing to use an existing drug or alcohol- testing program. Nothing in this rule or the regulations prohibits an appointing authority from implementing a drug or alcohol testing program required by federal law or approved by the commission in a collective bargaining agreement.

2-7.8 Coordination of Rule and Federal Regulations

This rule also applies to an employee subject to mandatory federal regulations governing drug or alcohol testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which (1) it is not possible to comply with both this rule and the federal regulation or (2) compliance with this rule is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

2-7.9 Regulations

The state personnel director shall establish the prohibited levels of drugs and alcohol in the regulations.

[Rule 2-7 last amended effective March 18, 2001]